

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4212 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No
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BADSHAH RANIYA VASAVA

Versus

DISTRICT MAGISTRATE

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Appearance:

MR ADIL MEHTA for Petitioner

Mr. L.R. Pujari, learned A.G.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/10/96

ORAL JUDGMENT ;

1. The petitioner seeks to challenge the detention order dated 12-4-96 passed by the District Magistrate, Bharuch detaining the petitioner under the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 16-4-96 and since then the petitioner is under detention lodged in District Jail, Rajkot.

2. This Special Civil Application was filed on 19-6-96 and on 20-6-96 the Rule returnable on 11-7-96 was

issued. As usual so far neither any reply has been filed by the respondents nor any affidavit-in-reply has been filed on behalf of the detaining authority.

3. The grounds for detention enclosed with the detention order show that there were 3 criminal cases under Bombay Prohibition Act pending against the petitioner pertaining to Police Station, Bharuch Rural. All these cases are of the year 1995 and are pending trial before the Court. The detaining authority after taking note of all the allegations in these 3 criminal cases has also referred to the statements of 4 witnesses with regard to the incidents dated 24-3-96, 25-3-96 and 27-3-96. The witnesses have stated that the petitioner was engaged in the business of the manufacture and sale of unauthorised liquor, he was keeping deadly weapons, which were being used by him freely, he had become a terror amongst the public and he had also been using chemicals manure like Urea, which is highly injurious to the health. The witnesses and other persons living in the area are beaten publicly. It has also been stated by the witnesses that the petitioner was a head strong person and was manufacturing liquor opposite bank of Narmada River, was keeping deadly arms and using them freely. Witness No.3 has also stated that the petitioner has threatened to store the petitioner's liquor stock in his field and when the witness refused, the petitioner came out with a stick and gave stick blows to the witness. The 4th witness has stated that the petitioner halted the rickshaw of the witness, the petitioner alongwith his associates came running with a big plastic bag and forcibly boarded the rickshaw and asked them to go to Zadeshwar Chokdi. At that time, the petitioner used the back side of the Dharia against the friend of the witness. On this count, the persons living in the near by area closed their houses and on account of the petitioner's fear the rickshaw was taken to the Zadeshwar Chokdi, but the petitioner and his associates went away without even paying the hire charges. The witnesses have requested for the reasons of their security that their identity be kept secret. Finding the apprehension of the witnesses to be genuine, the detaining authority has not disclosed the names, particulars and addresses of the witnesses. The detaining authority has also observed that in one of the criminal cases, the petitioner had to give the bond of good conduct for a period of one year and yet there is no improvement in the petitioner's conduct. The detaining authority has found that the other proceedings with regard to the externment etc. would not serve the purpose so as to prevent the petitioner from continuing his anti social activities

and, therefore, it was necessary to detain him and accordingly the detention order was passed against the petitioner.

4. Learned counsel for the petitioner has challenged the detention order on various grounds including the ground that the allegations as have been levelled against the petitioner even if taken to be correct on their face value do not constitute the case of breach of public order so as to warrant the detention and at the most it may constitute a case of breach of law and order.

5. Learned A.G.P. has supported the detention order orally.

6. I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations, as have been levelled, do not constitute a case of breach of public order. I have already considered the similar allegations in Special Civil Application No.3879 of 1996 decided on 4-10-96 and after considering the ratio of the judicial pronouncement by the Supreme Court and this Court, it has been found that the allegations, such as levelled in the present case, do not constitute the case of breach of public order and at the most it may constitute a case of breach of law and order. The reasoning on which the Special Civil Application No.3879 of 1996 has been allowed applies with full force to the facts of the present case. It is, therefore, held that the detention order, as passed in this case, was not at all warranted.

7. Accordingly this Special Civil Application is allowed. The impugned detention order dated 12-4-96 passed by the District Magistrate, Bharuch is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.